

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1858.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany Bill S. 160.]

The Committee on Naval Affairs, to whom was referred the petition of Thomas J. Page, lieutenant (now commander) in the navy, United States, for compensation for services performed as a purser, have had the same under consideration, and report :

This case was referred to the Naval Committee during the 1st session of the 32d Congress; and as the report made therein on the 19th May, 1852, gives a full statement of the petitioner's claim, and of the reasons for rejecting it, with the exception of seventy-five dollars expended in the preparation of his accounts, the committee adopt the said report, and now present it to the consideration of the Senate.

IN THE SENATE OF THE UNITED STATES, April 1, 1852.

Mr. MALLORY made the following report :

The Committee on Naval Affairs, to whom was referred the memorial of Lieutenant Thomas J. Page, of the United States navy, asking to be allowed the pay of a purser for the time during which he commanded the United States brig Dolphin, and performed purser's duties on board said vessel, has had the same under consideration, and thereupon submit the following report :

The memorialist alleges that "in October, 1849, while on the East India station, he was appointed to the command of the brig Dalphin, and with the command was united the appointment also of purser." He then proceeds to state that he performed the duties of purser on board said vessel, and adjusted his accounts with the government as an acting purser; and he submits an account of the time so employed, and for which he claims compensation at the rate of \$1,500 per annum, making the sum of \$3,037 92. He does not claim to have been a

purser, or to have received any appointment as *purser* or as an acting *purser*, but that he was appointed to command the brig, and that "with the command was united the appointment also of *purser*."

Your committee has given to the memorialist's claim very careful examination, with the view of affording him the relief he seeks, if it can be granted consistently with the existing laws and usages of the navy on the subject; and your committee is aware that many other officers of this branch of the public service have occupied similar positions, and performed similar services, and that their claims also are involved in its action.

The records of the Navy Department show that for a very long period it has been the practice of the Secretary of the Navy to direct the commanders of brigs and other smaller vessels to perform *purser's* duties, in addition to those of commander. The duties of supervising the financial concerns of the vessels generally have long been, and still are, considered incident to the command of such vessels, when the exigencies of the public service do not admit of their having a regular *purser*. Before the year 1835 officers commanding and thus performing *purser's* duties were permitted to purchase their own "slops," &c., and to charge a profit upon the articles furnished to their crews; but the act of March 3, 1835, (see *Stat. at Large*, vol iv, page 757,) precluded officers of the navy from receiving *any* incidental allowances, except for travelling expenses, and for the performance of the duties of a superior grade. In lieu of incidental allowances their pay proper was greatly augmented. As an example, the aggregate pay and subsistence of a lieutenant on sea service was raised from \$965 to \$1,573, and that of a lieutenant commanding (the case of the memorialist) from \$1,176 to \$1,873; and it was considered that this increase of pay would compensate for such "*extra*" services as had previously been separately charged for.

Your committee is not aware that any lieutenant commanding has ever received any extra allowance for attending to the duties of *purser* on board of his vessel; and when the memorialist took command of the *Dolphin* both the law and the practice of the department under it were in operation.

But in addition to the act just cited, the army appropriation act of August 23, 1842, directing that—

"No officer of any branch of the public service shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation thereof explicitly set forth that it is for such additional pay, extra allowance, or compensation."

The twelfth section of the act of 26th August, 1842, is in these words:

"No allowance or compensation shall be made to any clerk or other officer by reason of the discharge of duties which belong to any other clerk or officer in the same or any other department, and no allowance shall be made for any extra services whatever which any clerk or other officer may be required to perform."

The third section of the act of 3d March, 1839, is in these words:

"No officer in any branch of the public service, or any other person whose salaries or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation, in any form whatever, for the disbursement of public money, or the performance of any service, unless the said extra allowance or compensation be authorized by law."—(*U. S. Stat. at Large*, vol. 5, page 349.)

The act of 30th September, 1850, (U. S. Stat. at Large, vol. —, pages 542-3,) declares that "hereafter the proper accounting officers of the treasury, or other pay officers of the United States, shall in no case allow any pay to one individual the salaries of two different offices on account of having performed the duties thereof at the same time. But this prohibition shall not extend to the superintendents of the executive buildings."

The design of the legitimate construction of these acts cannot admit of a doubt.

But the memorialist claims that he held two distinct offices, and exercised the duties of both, and is entitled to receive the pay of both; and he submits an extract from a decision of Chief Justice Taney, delivered in the case of "*The United States vs. Joseph White*," in the circuit court, Maryland district, 1851, and also extracts from an opinion of Attorney General Crittenden, June 7, 1851, in support of his claim.

It is evident to your committee that the memorialist did not hold two distinct offices. The duties of a purser on board of small vessels like the *Dolphin* were incident to those of commander, and compensation, in lieu of a distinct and separate allowance for them, had previously been made by law. That such incidental services afford no foundation for a claim for extra compensation was evidently the opinion of the chief justice in the case cited. He says:

"A navy agent, therefore," (and the principle is equally applicable to any other officer,) "is not entitled to compensation beyond his salary as fixed by law for any extra services, although such services may be out of the district for which he is appointed, and may more properly appertain to the duties of another navy agent, or even to an officer of the government filling an office of a different character. His salary is the only compensation for services required of him and performed by him if he holds no other office or appointment."

The memorialist was not a purser; he pretends no appointment as purser; the duties of purser were incident to the command of the *Dolphin*; and they were discharged by "*an officer of the government filling an office of a different character*."

The memorialist is not entitled, in the judgment of your committee, to the relief he claims. He alleges that, in the preparation of his accounts, in the various forms required by the practice of the accounting officers of the treasury, he expended about seventy-five dollars. A reasonable allowance should be made for this expenditure. A naval officer cannot be presumed to be conversant with the accurate details so necessary in the preparation and adjustment of long standing accounts, beyond the sphere of his ordinary and legitimate duties; and your committee report a bill for the relief of the memorialist to this extent.

